

General Information Letter: The Illinois Department of Revenue cannot compromise tax debts other than through Board of Appeals review, and is not bound by a restrictive endorsement on a check.

August 24, 2001

Dear:

This is in response to your letter dated August 16, 2001 in which you request information regarding Illinois income tax laws. The nature of your request and the information you have provided require that we respond with a General Information Letter (GIL). A GIL is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 86 Ill. Adm. Code 1200.120(b) and (c), which may be found on the Department's website at www.revenue.state.il.us.

In your letter you have stated the following:

After many notices, letters and phone calls have gone back and forth between myself and the Illinois Department of Revenue, the litigation department gave me your name as the individual who might finally be able to answer a question which no one else in the Department has been able to answer with any certainty.

The basic question is whether or not the Illinois Department of Revenue will honor a restrictive endorsement on a check presented to its agent, a collection agency in this case, for payment of taxes penalty and interest.

I am enclosing a copy of my original correspondence that details the events that took place and my position in this case.

I am looking for a written response on the Department's position. The collection section of the Department made this request of me.

They have given me until the end of August 2001 to obtain an answer in this matter.

The "original correspondence" referred to above states the following:

The following is in response to your attached correspondence.

For the calendar tax years ended 1989, 1990, 1994 and 1996 the amounts due were turned over to Credit Bureau Accounts by the Illinois Department of Revenue. A letter was sent to Credit Bureau Accounts in January of 1999, a copy of which is attached.

As stated in the letter, a request was made of Credit Bureau Accounts to waive all penalty and interest due for the years 1989, 1990, 1994 and 1996 since all taxes for the years in question were paid.

Notices received from Credit Bureau Accounts had not included corresponding worksheets or if they were included they would not correspond to the amounts on the notice. Also the address for the Illinois Department of Revenue on their notice was incorrect as evidenced by

the fact that the carbon copy of this letter was returned as undeliverable. All of this shows a lack of competence on the part of your agent.

After our request was made to waive the penalty and interest, a notice was received with a balance of \$48.82. Assuming our request had been complied with and this was just an incidental balance we paid the \$48.82. In good faith and for our own protection from their horrific bookkeeping we restricted the endorsement on our check stating that the tax was payment in full for tax, penalty and interest for the periods 1989, 1990, 1994 and 1996.

They cashed the check accepting the terms of the endorsement and all tax, penalty and interest for the periods in question were no longer due. Copies of the documents are attachments [sic] to the copy of the original letter.

Also, at this time I am requesting the penalty and interest for the period 1997 be waived.

RULING

Section 2505/2505-250 of the Civil Administrative Code of Illinois (20 ILCS 2505/2505-250) provides in pertinent part as follows:

§2505-250 Compromising debts due to the State. Under no circumstances shall any officer or employee of the Department compromise any debt due to this State, except in the case of actions of the Director [of the Department of Revenue] after review by the Board of Appeals provided by Section 95-505.

Pursuant to section 2505/2505-505 of the Civil Administrative Code (20 ILCS 2505/2505-505, the Department has established a Board of Appeals to review Department actions in controversies involving the determination of liability for Illinois income tax, including penalties and interest. (86 Ill. Adm. Code 210.101 et seq.) Pursuant to Department of Revenue Regulations section 210.101, review before the Board of Appeals requires the filing of a written petition with the Board. In addition, the regulations here set forth specific provisions for the Board of Appeals regarding offers in compromise and waivers of penalty and interest. (See 86 Ill. Adm. Code 210.120)

It is settled law that where a statute sets forth procedures for the compromise of tax claims, such procedures constitute the exclusive means by which such claims may be settled. (Botany Worsted Mills v. United States, 278 U.S. 282, 288-89 (1929); Glauber Valve Company, Inc. v. United States, 536 F. Supp. 68, 71-71 (E.D. Ark. 1982); Colebank v. United States, T.C. Memo 1977-46 (1977)) Therefore, with respect to tax liability attempts at compromise based on accord and satisfaction are ineffective. (Laurins v. Commissioner, 889 F.2d 910 (9th Cir. 1989); In Re Busick, 90-1 U.S. Tax Cas. (CCH) P50,225 (N.D. Ind. 1990))

In the instant case, then, the Department is not bound by the terms stated on your check that purport to condition acceptance upon agreement to the proposed compromise. Under section 2505/2505-250 of the Civil Administrative Code, petition before the Board of Appeals constitutes the exclusive means by which taxpayers may seek a compromise as to penalties and interest owed with respect to Illinois income tax liability. Since you have failed to file such a petition, penalties and interest for the tax years at issue have not been waived.

Finally, even assuming that compromise of an Illinois tax liability may be effected by means of an accord and satisfaction, in this case the provisions of section 5/3-311 of the Uniform Commercial Code – Negotiable Instruments (the “Code”) have not been satisfied. To obtain an accord and satisfaction by use of a negotiable instrument under that section, the person against whom a claim is asserted must prove, among other things, that the amount of the claim is unliquidated or subject to a bona fide dispute. (810 ILCS 5/3-311(a)) Regarding this requirement, the Official Code Comment clarifies that discharge of a debt by accord and satisfaction under section 5/3-311 shall not apply “to cases in which a debtor is seeking discharge of such a debt by paying less than the amount owed.” In this case, by requesting that the Department *waive* penalties and interest, you are in fact seeking discharge of a debt by paying less than the amount owed. Accordingly, the Department’s claim with respect to penalties and interest would not be discharged under Code section 5/3-311.

As stated above, this is a GIL which does not constitute a statement of policy that applies, interprets or prescribes the tax laws, and it is not binding on the Department. If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items one through eight of 86 Ill. Adm. Code 1200.110(b). If you have additional questions regarding this GIL, you may contact Legal Services at (217) 782-7055.

Sincerely,

Legal Services Division
Illinois Department of Revenue